



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 29, 1993

Ms. Sharon Gillespie
Assistant General Counsel
Texas Department of Banking
2601 North Lamar Blvd.
Austin, Texas 78705-4294

OR93-209

Dear Ms. Gillespie:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a. Your request was assigned ID# 18613.

The Texas Department of Banking (the "department") received a request for a letter and report of an evaluation of the operation of the Commerce Bank of Plano, Texas. Both documents were prepared by Stuart and Associates in 1987 for the Board of Directors of the Commerce Bank of Plano to assess the bank's readiness for examination by the Federal Reserve Bank and the department. You assert that you must withhold the requested information based on section 3(a)(1) of the Open Records Act, in conjunction with subsection (a) of article 342-210, V.T.C.S.

Section 3(a)(1) of the Open Records Act exempts from required public disclosure information deemed confidential by statutory law. Subsection (a) of article 342-210 states in part as follows:

all information obtained, either directly or indirectly, by the Banking Department relative to the financial condition of any bank or bank holding company other than *call reports* and *profit and loss statements*, whether obtained through examination or otherwise, except in *published statements*, and all files and records of said Department relative thereto shall be confidential, and shall not be disclosed by the Banking Commissioner or any officer or employee of the Department. [Emphasis added].

The requested information is information obtained by the department and concerns the financial condition of a bank. Whether article 342-210 deems this information confidential

depends on whether the information is within one of that provision's three exceptions to confidentiality: "call reports," "profit and loss statements" or "published statements."

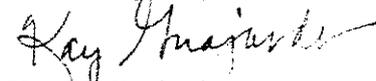
Article 342-209 requires the Banking Commissioner to "call" upon each state bank four times each year to make and "publish a statement" of its financial condition. This office examined the legislative history of this provision and determined that "call reports" and "published statements" in article 342-210 both refer to the called statements of financial condition required to be published by article 342-209. *See* Open Records Letter No. 92-564 (1992). In that decision, we determined that since the requested external auditor's reports were not part of the financial report filed with the department pursuant to article 342-209, the exceptions to confidentiality for "published statements" and "call reports" in article 342-210 did not apply. Similarly, we think that since the letter and report at issue here are not part of the bank's financial statement published pursuant to article 342-209, those documents are not within the exceptions to confidentiality in article 342-210 for "published report" and "call statements."

Nor are the two documents within the exception provided for "profit and loss statements." As the term "profit and loss statements" is not defined in the Texas Banking Code, this office interprets the term according to its commonly understood meaning. *See id.* at 2. Thus, a profit and loss statement is a financial statement of a business showing the business' revenues and expenses for a given period. *See id.* (citing WEBSTER'S THIRD NEW INT'L. DICTIONARY 1143, 1811 (1969) and BLACK'S LAW DICTIONARY 763, 1211 (1990)). Applying this general definition, we conclude that the requested letter and report do not constitute "profit and loss statements." *See id.* at 2-3.

As we have determined that none of the three exceptions to confidentiality apply, article 342-210 deems the requested documents confidential. You must, therefore, withhold the requested documents pursuant to section 3(a)(1) of the Open Records Act.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR93-209.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Opinion Committee

KHG/CAB/le

Ref: ID# 18613
ID# 18616

Enclosures: Documents Submitted

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